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OFFICE OF THE CLERK
SUPREME COURT, U.S.

80-5725

IN THE SUPREME COURT OF THE UNITED STATES

LONNIE GOODEN,
Appellant

VS NO. _____

THE STATE OF TEXAS,
Appellee

STATEMENT OF JURISDICTION AND/OR
~~PETITION FOR WRIT OF CERTIORARI~~

TO THE HONORABLE COURT:

NOW comes Lonnie Gooden, Appellant herein, and respectfully begs relief of this Court.

I.

The question set before this Court by way of appeal or by way of certiorari is whether or not Texas is to be permitted to vitiate the teachings of U.S. vs CHADWICK, 433 US 1, 53 LE(2) 538, 97 SC 2476 (1977); and ARKANSAS vs SANDERS, 444 US 753, 61 LE(2) 235, 99 SC 2586 (1979); by holding that Appellant had no standing to raise the CHADWICK-SANDERS defense.

II.

The parties to this proceeding are RONNIE EARLE, District Attorney, Travis County, Texas; MARK WHITE, Attorney General, State of Texas; and Appellant, LONNIE GOODEN.

III.

The opinion in this case by the Texas Court of Criminal Appeals will not be published, but it is in the possession of Thomas F. Lowe, Clerk of that Court, in the Texas Supreme Court Building, Capitol Station, Austin, Texas 78711, and should be in the Record pursuant to the attached Request for Certification. A copy is attached hereto.

(Although Art. 44.24 Tx. Code Cr. Procedure, provides that the Court shall make its decision and set forth "the reason for such decision"; Rule 10 of its Local Rules pursuant to 44.33 TCCrP provides that an opinion may be issued per curiam and not published. Such was done here.)

The concise ground of jurisdiction in this Court is 28 USC §1257(2) and (3), in that CHADWICK-SANDERS teaches that evidence obtained from a rightfully seized closed container which is opened without a warrant is illegal evidence. Art. 38.23 of the TCCrP proscribes the use of illegally seized evidence. Here the Court permitted illegally seized evidence to be used, effectively using Art. 38.23 in an unconstitutional manner.

Further, Texas holds to the "no standing" doctrine as a defense for circumventing CHADWICK-SANDERS, even though the question of standing was never suggested in the Trial Court, and even though the bag was quite clearly in the possession of Defendant moments before it was seized by the police.

IV.

This is a criminal case and the judgment was entered on August 30, 1979. It was heard by the Court of Criminal Appeals who decided the matter on June 11, 1980, and the motion for rehearing was overruled on September 10, 1980. The case was tried in the 147th District Court of Travis County, Texas, and was appealed to the Texas Court of Criminal Appeals sitting in Austin, Travis County, Texas.

V.

One Sally Sullivan lost a "black case". With its contents, it had a value of $207.00, and without the contents it was worth less than $200.00. It was an "emergency kit", a "brief-case sized black one-handled kit", a "kit", a "black suitcase", and a "bag". Gooden brought a "black bag" to Mike Gillespie, a pawn

broker, who remembered the contents were a syringe and some bottles. He called it a "black medical bag", a "case", and a "medical case", and a "bag".

George M. Mayes gave Gooden a ride, and Gooden had a "brief case" with him. Perkins, a policeman, got the bag from Mrs. Gooden's house

(Mrs. Gooden is the Appellant's mother)

after he learned that Gooden had brought the case to his mother's house. He referred to it as an "attache case", a "Doctor's emergency kit", and a "bag". Perkins opened the case without a warrant.

With the contents of the case shown, the testimony as to the value became over $200.00, and Gooden was convicted of felony theft under §31.03, Penal Code.

VI.

It is clear that the Appellant had a bag he left at his mother's house that the police had reason to seize and they did, but they had no right to open the bag without a warrant under the CHADWICK-SANDERS teachings; cf. ARAJ 592 SW(2) 603 (1979). They did so, and the illegally seized evidence was used to convict Appellant of the claim.

VII.

Attached hereto is a copy of the NOTICE OF APPEAL, REQUEST FOR CERTIFICATION OF THE RECORD, and the Slip Opinion of the Texas Court of Criminal Appeals (unpublished).

VIII.

This case should be summarily heard by this Court, reversed, and the prosecution ordered dismissed under BURKS vs U.S. and the stable of cases which follows it, in 57 LE(2) pages 1 through 90.

PRAYER

ACCORDINGLY, relief is prayed for.

RESPECTFULLY SO PRAYED,

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

(Member of the Bar of the United States Supreme Court)

ATTORNEY FOR APPELLANT

80-5725

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IN THE SUPREME COURT OF THE UNITED STATES

LONNIE GOODEN,
Appellant

VS NO. _____

THE STATE OF TEXAS,
Appellee

MOTION TO WAIVE THE RULES
REGARDING APPELLANT'S REQUEST FOR RELIEF

TO THE HONORABLE COURT:

NOW comes the Appellant herein, Lonnie Gooden, and respectfully moves this Court to waive the requirements of Rule 15 and/or Rule 21 for the following reasons:

I.

The pertinent portion of this case consists of the Statement of Facts in the Trial Court, consisting of 39 pages of testimony. The case turns on one point and one point only, which is set out below, to-wit:

> The police seized an attache case and opened it and seized its contents without a warrant, in violation of
>
> US vs CHADWICK 433 US 1 (1977), and
> ARKANSAS vs SANDERS 442 US 753 (1979)
>
> (which is followed in Texas by ARAJ vs STATE, 592 SW [2] 603 [1979]).

In this case, the Appellant was found guilty and the Texas Court of Criminal Appeals, by a per curiam opinion, affirmed, with reasons given (Art. 44.24 Texas Code of Criminal Procedure) saying that it was "doubtful" that Appellant had standing to raise the CHADWICK-SANDERS defense.

II.

Since this is the only issue, it would be a waste of time, money and expense to require compliance with the foregoing Rules.

ACCORDINGLY, it is hereby moved that this Court waive the Appellant's compliance with its Rule 15 and Rule 21.

RESPECTFULLY SO MOVED,

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
512 San Antonio
Austin TX 78701
512 477 4210

ATTORNEY FOR APPELLANT,
LONNIE GOODEN

(Member of the United States Supreme Court Bar)

Rec'd June 12-82

LONNIE GOODEN, Appellant

NO. 63,921 v. - - - Appeal from TRAVIS County

THE STATE OF TEXAS, Appellee

OPINION

This is an appeal from a conviction for theft over $200. Punishment is imprisonment for three years.

Appellant urges that the court erred in admitting testimony concerning the contents of a medical bag because the police opened the bag and examined its contents without first procuring a warrant. Appellant also urges that the evidence is insufficient to sustain the conviction absent the evidence complained of. Appellant relies on U.S. v. Chadwick, 433 U.S. 1 (1977), and Arkansas v. Sanders, ____ U.S. ____, 99 S.Ct. 2586 (1979) to support his claims.

Appellant stole the medical bag in question and left it at his mother's house. Police recovered the bag from the house, with the mother's consent. Appellant was convicted for stealing the bag and its contents. The value of the bag alone was less than $200, but the combined value of the bag and its contents was over $200.

It is extremely doubtful that appellant had standing to challenge the search of the bag. See Hutchinson v. State, 509 S.W.2d 598 (Tex. Crim.App. 1974). Even assuming that he had standing, however, any error in the admission of the testimony was harmless beyond a reasonable doubt. The State proved the contents of the bag, as well as the value of the contents, through the testimony of Sally Sullivan, the administrator of the family planning clinic from which the bag was stolen. Appellant did not object to Sullivan's testimony on the ground now alleged. Appellant only objected on the ground now raised when, subsequent to Sullivan's testimony, Austin police officer Leon Perkins testified to what he observed in the bag. Perkins did not testify to the value of the bag's contents.

Sullivan's testimony was properly admitted and was sufficient to establish the value of the bag and its contents. Any error in the

admission of Perkins' testimony was harmless beyond a reasonable doubt. Appellant's contentions are overruled.

The judgment is affirmed.

PER CURIAM

Delivered June 11, 1980

Panel No. 2, Second Quarter, 1980, composed of:
Leon Douglas, Judge
W. T. Phillips, Judge
W. C. Davis, Judge

COURT OF CRIMINAL APPEALS OF TEXAS
CLERK'S OFFICE

Austin, Texas, SEP 10 1980

Dear Sir:

I have been instructed to advise that the Court has this day denied "Leave To File" the Appellant's Motion for Rehearing in Cause No. 63,921, LONNIE GOODEN

vs.

THE STATE OF TEXAS Appellee.

Sincerely yours,

[redacted]
THOMAS LOWE, Clerk

COPY

COURT OF CRIMINAL APPEALS

FOR THE STATE OF TEXAS

SITTING IN AUSTIN, TEXAS

FILED
Nov. 14, 1980

LONNIE GOODEN,
Petitioner-Appellant-Defendant

VS

THE STATE OF TEXAS,
Appellee-Plaintiff

NO. 63,921

From the 167th District Court of Travis County, Texas, No. 57,579.

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

(SC* Rules 10)

NOTICE IS HEREBY GIVEN that LONNIE GOODEN, Defendant, Appellant and Petitioner above named, hereby appeals to the United States Supreme Court from the final judgment (and opinion) of the Court of Criminal Appeals for the State of Texas sitting in Austin, Travis County, Texas, under date of June 11, 1980, with Motion for Rehearing overruled on September 10, 1980.

This action is taken under 28 USC §1257(2 and 3).

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

(Licensed by the
(State of Texas and
(Member of the Bar
(of the United
(States Supreme Court.

ATTORNEY FOR LONNIE GOODEN

CERTIFICATE OF SERVICE
(SC* Rule 33[1,2][b])

The undersigned attorney hereby certifies that an original of this notice was filed with the Clerk of the Court of Criminal Appeals for the State of Texas sitting in Austin, Travis County, Texas; and a copy with Mr. Ronnie Earle, District Attorney for Travis County, Texas, at his official office in Austin, Travis County, Texas, all on the 13th day of November, 1980.

J. P. DARROUZET, Attorney for
LONNIE GOODEN

*United States Supreme Court.

COURT OF CRIMINAL APPEALS

FOR THE STATE OF TEXAS

SITTING IN AUSTIN, TEXAS

COPY

LONNIE GOODEN,
Appellant

VS

CRIM. NO. 63,921

THE STATE OF TEXAS,
Appellee

REQUEST TO CERTIFY THE RECORD

(SC* Rules 13.1)

TO: THOMAS F. LOWE, CLERK, Court of Criminal Appeals, Supreme Court Building, Capitol Station, Austin, Texas 78701.

The request is hereby made to the Clerk of the Court of Criminal Appeals in Austin, Texas, to certify the Record, including the Court's unpublished opinion, in the above styled cause to the Supreme Court of the United States, Washington D.C. 20543, pursuant to Rules of the Supreme Court of the United States.

RESPECTFULLY SO REQUESTED,

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

ATTORNEY FOR APPELLANT,
LONNIE GOODEN

(Member of the Bar of the United States Supreme Court)

*United States Supreme Court Rules

RECEIVED
NOV 17 1980
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SUPREME COURT, U.S.

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

LONNIE GOODEN,
PETITIONER

VS

THE STATE OF TEXAS,
RESPONDENT

NO._____

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

(28 USC §1915: Supreme Court
[herein SC] Rule 53)

TO THE HONORABLE COURT:

This case arose under the reverse style in the 147th District Court of Travis County, Texas - later transfered to the 167th District Court of Travis County, Texas, under Cause No. 57,579, which case was appealed to the Court of Criminal Appeals for the Third Supreme Judicial District of Texas under their Cause No. 63,921. The judgment of the trial court was "guilty." The Opinion of the Court of Criminal Appeals is attached, dated June 11, 1980; and Motion for Rehearing was overruled on September 10, 1980. The action by the Court of Criminal Appeals of Texas was to affirm the trial court.

It is the intention of Lonnie Gooden to proceed with this case. It is the intention of the undersigned attorney to carry it forward at no fee.

Lonnie Gooden is indigent; he has no money, nor has he had any money during the entire course of the matters giving rise to this cause of action. On May 15, 1979, he was indicted for Theft (Sec. 31.01 et seq. Texas Penal Code) and the undersigned attorney was hired by the Mother of Lonnie Gooden to represent him. He was subsequently

(9/4/79) tried for the crime and convicted and was sentenced to three (3) years confinement in the Texas Department of Corrections.

The undersigned attorney felt the need to raise the questions involved in this case and accordingly is willing to prosecute this case before this Court.

Total fees of $740.00 were billed to the mother of Lonnie Gooden of which $340.00 has been paid (in addition to $126.00 for expenses). No further bills will be sent or charged. The undersigned attorney has received no other fees for this case, nor has he contracted directly or indirectly for any such fees.

The undersigned attorney felt and does feel that this cause of action is meritorious and that the matter is:

a. of utmost importance;

b. a case where the CONSTITUTIONS of the United States and of Texas have been thwarted by the action of the Court of Criminal Appeals;

c. one in which valuable constitutional rights are being deprived without sufficient reason; and

d. one in which this Court should intrude so that justice may be achieved.

Accordingly then, pursuant to 28 USC §1915, the undersigned attorney hereby says under oath:

1. Lonnie Gooden is unable to give costs or give security for the costs of this lawsuit;

2. Lonnie Gooden has been denied relief due him under constitutional rights by the Court system of the State of Texas; and

3. Lonnie Gooden and his attorney believe and allege it to be a fact that he is entitled to redress before this Court; and further say that such redress is sought in good faith - all being made more manifest in the documents attached hereto and of which the contents are hereby incorporated herein the same as if here written word for word.

Further, attached hereto is an AFFIDAVIT OF INDIGENCY executed by Lonnie Gooden.

ACCORDINGLY, leave is requested to proceed in forma pauperis in this matter; that the Petition accompanying

this Motion be filed, and that on final hearing hereof, it is prayed that justice be done.

RESPECTFULLY SO PRAYED,

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

(Member, Bar of Supreme Court of the United States)

ATTORNEY FOR PETITIONER,
LONNIE GOODEN

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared J. P. DARROUZET who, upon his oath duly administered by me, deposed and said:

My name is J. P. Darrouzet. I am an attorney and am competent to give this Affidavit. I hereby swear that all of the factual matters set forth in the foregoing MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS are true and correct to my own knowledge and belief.

J. P. Darrouzet

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 13th day of November, 1980, to certify which witness my hand and seal of office.

Carolyn I. Marshall
Notary Public in and for
Travis County, T e x a s

CAROLYN I. MARSHALL
Notary Public, in and for Travis County, Texas
My Commission Expires December 31, 1980

AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF WALKER

BEFORE ME, the undersigned authority, on this day personally appeared LONNIE GOODEN who, upon his oath duly administered by me, deposed and said:

My name is Lonnie Gooden. I am the same person who was convicted of theft in Cause No. 57,579 in the 167th District Court of Travis County, Texas.

I am indigent. I have no assets of any kind whatsoever. I have no credit; I have no friends from whom I can borrow money; I am indigent and destitute.

I was in such condition at the time of my trial before September of 1979, and have remained the same since.

I have authorized J. P. DARROUZET of Austin, Travis County, Texas, to proceed with the Appeal of this case to its final conclusion, wherever that may end, including the Supreme Court of the United States.

Lonnie Gooden
LONNIE GOODEN

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 25th day of June, 1980.

Notary Public in and for
Walker County, T e x a s